

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION,

Debtor.

PROMESA
Title III

No. 17 BK 3284-LTS

**OBJECTION OF THE GMS GROUP, LLC TO REVISED PROPOSED (I) FINDINGS
OF FACT AND CONCLUSIONS OF LAW REGARDING CONFIRMATION OF THE
THIRD AMENDED TITLE III PLAN OF ADJUSTMENT OF PUERTO RICO SALES
TAX FINANCING CORPORATION, AND (II) ORDER AND JUDGMENT
CONFIRMING THE THIRD AMENDED TITLE III PLAN (DKT. 4846)**

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Attorneys for The GMS Group, LLC

Dated: January 22, 2019

The GMS Group, LLC (“GMS” or “Secured Creditor”), by way of objection to the Revised Proposed (I) Findings of Fact and Conclusions of Law Regarding Confirmation of the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation, and (II) Order and Judgment Confirming the Third Amended Title III Plan (Dkt. 4846) (the “Revised Proposed Findings and Order”) respectfully shows the court as follows:

1. As of January 4, 2019, GMS was the holder of \$430,110,000 of Subordinated COFINA bonds (the “GMS Bonds”) in approximately 1,686 retail client accounts consisting of 4,391 bondholder positions. In addition, GMS is the holder of \$47,520,000 par value in GMS proprietary accounts (the “Proprietary Bonds”). Thus, the aggregate total of GMS Bonds and Proprietary Bonds held by GMS as of January 4, 2019 is 477,630,000. The bonds are held at Pershing LLC, a subsidiary of Bank of New York Mellon (“BNYM”), the indenture trustee under the bonds.

2. On December 21, GMS filed an “Amended Objection Of The GMS Group, LLC To Second Amended Title III Plan Of Adjustment Of Puerto Rico Sales Tax Financing Corporation And Request For Evidentiary Hearing” with supporting exhibits (the “GMS Objection”). *See, Docket 4564.*

3. On December 28, 2018, Peter C. Hein filed the “Objection Of Individual Cofina Subordinate Bondholder Residing In The 50 States Who Purchased At The Original Offering Prices, To Confirmation Of Puerto Rico Sales Tax Financing Corporation (“Cofina”) Plan, And Response And Opposition To Cofina’s Thirteenth Omnibus Objection To Individual Claim No. 10701” (the “Hein Objection”). *See, Docket 4585.*

4. On December 31, 2018, GMS filed a joinder (the “GMS Joinder”) to the Hein Objection. *See, Docket 4587.*

5. On December 31, 2018, Hein filed a supplement to the Hein Objection (the “Hein Supplement”). *Docket 4595.* GMS filed a Joinder to the Hein Supplement.

6. In addition, GMS filed Declarations in support of its Objections. *See, Docket 4606 & 4641.*

7. GMS also filed Motions to present a rebuttal witness and cross examine the FOMB and Senior Bondholder Coalition declarants. *See, Docket 4683 and 4768.*

8. At least eight (8) other parties in addition to GMS have also filed objections to the confirmation of the Plan of Adjustment.¹

9. The Financial Oversight and Management Board (“FOMB”) and the Senior Bondholder Coalition (without including the parties that filed joinders) filed replies and memorandums of law in support of the confirmation of the Plan of Adjustment.

10. In addition to GMS, PROSOL-UTIER filed a motion to present a rebuttal witness and cross-examine the FOMB and/or Senior Bondholder Coalition declarants.

¹ Cooperativas de Ahorro y Credito (docket 415 in case 17-3284); Stephen Magiaracina (Docket 4215 & 4481 of case 17-3283); Certain Workers Unions and Manuel Natal (Docket 4607 of case 17-3283); United Auto Workers International Union (Docket 4556 of case 17-3283); Peter Hein (Docket 4585, 4595 and 4673 of case 17-3283); PROSOL-UTIER (Docket 4592 and 4607 of case 17-3283); Mark Elliot (Docket 4598 of case 17-3283); Lawrence Dvovres (Docket 4613 of case 17-3283).

11. On January 16 and 17, 2019, the Court conducted an evidentiary hearing (the “Hearing”) to consider confirmation of the Plan and the objections (including those of Hein, Mark Elliott and GMS thereto).

12. At the Hearing, the Court raised certain questions regarding certain proposed findings of fact, conclusions of law and other provisions of a prior version of the Revised Proposed Findings and Order. In response, the FOMB submitted the Revised Proposed Findings and Order.

13. In Paragraph 119 of the Revised Proposed Findings and Order, the FOMB would have this Court find: “No objector presented any evidence at the Confirmation Hearing regarding the passage and enactment of the New Bond Legislation, and, thus, has not met its burden to rebut this presumption with respect to the New Bond Legislation.” This proposed finding ignores the objections of GMS, Hein and Elliott, which were presented and reaffirmed at the Hearing.

14. The objections presented by GMS and others raised the argument that the proposed Plan constitutes a taking of the bondholder interests (including liens on the SUT) of GMS, Hein, Elliott and all other junior bondholders. The New Bond Legislation implements the Plan and thus is part and parcel of the taking mechanism to which GMS, Hein and Elliott have objected. Since the New Bond Legislation is presented by the FOMB as essential to the Plan and GMS, Hein and Elliott presented evidence that the Plan constitutes a taking that is unconstitutional, it is impossible to find that no evidence has been presented to challenge the constitutionality of the New Bond Legislation.

15. It was uncontested at the hearing that PROMESA was enacted after the liens on the SUT were granted to the bondholders that included GMS, Hein and Elliott. GMS presented

evidence through the cross-examination of FOMB's expert that the expert had not offered an opinion as to the likelihood of any particular outcome regarding the legal challenges by the Commonwealth to the statutory lien granted to COFINA.

16. There is more than simply the absence of any evidence presented as to the probability of outcome of the Commonwealth prevailing. It is undisputed that the sections of language in Act 91 and the New Bond Legislation regarding the effectiveness of the statutory lien in favor of COFINA in the SUT are substantially similar. GMS, Hein and Elliott have all presented argument to the Court (supported by the lack of evidence of any expert opinion as to the likelihood of the Commonwealth prevailing on the challenge to the SUT statutory lien) that the New Bond Legislation can only be constitutional if Article 91 is as well. Thus, approving a settlement based on a supposed challenge to Article 91 while affirming new legislation with the same language is an impossibility. Conversely, GMS, Hein and Elliott have all presented argument to the Court, supported by the same evidentiary presentations, that, if Article 91 is unconstitutional, then the New Bond Legislation is as well, and thus the Plan lacks adequate means for implementation.

17. Accordingly, GMS objects to the Revised Proposed Findings and Order.

CONCLUSION

For the foregoing reasons, and to be supplemented if required, GMS respectfully requests that the Court not enter the Revised Proposed Findings and Order.

Dated: San Juan, Puerto Rico

January 22, 2019

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